APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5027

RUSSELL BRYAN, Individually and on Behalf of All Other Persons Similarly Situated,
Petitioner,

—*v.*—

ITASCA COUNTY, MINNESOTA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

PETITION FOR CERTIORARI FILED JULY 7, 1975
CERTIORARI GRANTED NOVEMBER 3, 1975

Supreme Court of the United States

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INDEX TO APPENDIX

		Page
A.	Complaint	1
B.	Answer of Itasca County	4
C.	Answer of State of Minnesota	5
D.	Stipulation of Facts	8
E.	Order Dismissing State of Minnesota	11
F.	Judgment and Decree	12
G.	Findings of Fact, Conclusions of Law and Order for Judgment	14
H.	Memorandum of Judge James F. Murphy	17
I.	Opinion of the Supreme Court of Minnesota	36
J.	Judgment of the Supreme Court of Minnesota	49
K.	Transcript of Hearings on H.R. 1063 Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., Monday, June 29, 1953	50
L.	1855 Treaty with the Chippewas	58

Page

M. Letter from Assistant Secretary of the Interior, Orme Lewis, to the Honorable A. L. Miller, Chairman, Committee on Interior and Insular Affairs of the House of Representatives, June 26, 1953 69

N. Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari 74

IN THE DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA; and the STATE OF MINNESOTA by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

COMPLAINT

The Plaintiffs, for their cause of action against defendants, state allege:

1. That the Plaintiff Russell Bryan is an adult person, an enrolled member of the Minnesota Chippewa Tribe, and residing within that portion of the Leech Lake Indian Reservation lying in Itasca County, Minnesota.
2. That Itasca County is a municipal subdivision of the State of Minnesota asserting and exercising both criminal and civil authority within its boundaries; and more particularly assessing, levying upon, and collecting taxes from personal property within its boundaries.
3. That the function of assessment and collection of personal property taxes is under color of State Law enacted by the Legislature of the State of Minnesota, administered and supervised through the Commissioner of Taxation for the State, Art Roemer.
4. That in the month of October 1971, the Plaintiff Russell Bryan purchased a 1972 Skyline Mobile Home, which was placed upon a tract of land in Squaw Lake, Itasca County, and used by him as the permanent and continuous residence of himself, his wife and children.

5. That he occupies a parcel of land for this purpose under a lease or permit, and by reason of his enrollment as a member of the Chippewa Tribe, according to the official membership rolls maintained by the Bureau of Indian Affairs of the Department of Interior.

6. That the parcel of land occupied by him and upon which his mobile home is located is within Sec. 17, 18, Township 148 North, Range 27 West of the 5th Principal Meridian, and the fee title of which is vested in the United States of America in Trust for the Minnesota Chippewa Tribe.

7. That in June 1972 he was notified by the County Auditor of Itasca County that pursuant to the provisions of Minnesota Statutes 168.012, Subd. 8, as amended by Laws 1961, Chap. 340, his mobile home has been assessed for 2 months of 1971 for a tax liability of $29.85, which would become due and payable 30 days after that notice to him.

8. That on or about the 20th day of July, 1972 he received a Personal Property Tax statement issued by the County Treasurer of Itasca County indicating a tax liability on the mobile home for the year 1972 of $118.10.

9. That in actuality the County of Itasca and State of Minnesota have no lawful authority to assess or impose a tax upon his personal property, and that any enactment of the State Legislature or rule of the Tax Commissioner, or exercise of purported authority in furtherance thereto is contrary to the provisions of the United States Constitution, Article I. Sec. 8, Chap. 2, and is an inference with an instrumentality of the United States Federal Government, in that the property of tribal Indians living within reservation and upon tribal or United States land, in furtherance of the general policies and objectives of the United States, are exempt from State or Local taxation.

10. That Russell Bryan belongs to a class of people similarly situated with the same incidents of being tribal Indians, living on tribal land within a Federal Indian Reservation, but that their numbers are too great to identify precisely.

11. That there exists between plaintiffs and defendants a justifiable controversy which ought to be determined to establish the relative rights and duties of the parties.

WHEREFORE, Plaintiff prays that the court enter its judgment declaring that the defendants have no authority to assess, levy upon, or collect personal property taxes from persons within their classification, and enjoining the same defendants from any and all acts now or in the future which would accomplish those same ends.

Dated: September 11, 1972

/s/ Patrick J. Moriarty
PATRICK J. MORIARTY
Attorney for Plaintiffs
Leech Lake Reservation
Legal Services Project
Box 425
Cass Lake, Minnesota
(218) 335-2223

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA; and the STATE OF MINNESOTA by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

ANSWER OF ITASCA COUNTY

Now comes the Defendants, County of Itasca and for its Answer states and alleges:

1. Denies each and every allegation set forth of the complaint herein except as hereinafter admitted.

2. Admits the allegations of the complaint as set forth in Paragraphs 2, 3, 8, and 11.

3. Alleges that it has no knowledge as to the allegations set forth in Paragraphs 1, 4, 5, 6, 7, and 10, thereby putting the Plaintiff to the strict proof thereof.

4. Specifically denies Paragraph 9 of the Complaint and specifically alleges that the County of Itasca is empowered to assess and collect taxes on all property of the kind set forth in the Complaint located within the County of Itasca.

WHEREFORE, Defendants, County of Itasca prays the Court to dismiss the Plaintiff's pretended cause of action.

/s/ W. J. Spooner
W. J. SPOONER
Itasca County Attorney
Court House
Grand Rapids, Minnesota

DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA; and the STATE OF MINNESOTA by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

ANSWER OF STATE OF MINNESOTA

The defendant State of Minnesota by its Commissioner of Taxation, Arthur C. Roemer, for its separate Answer to the Complaint of the plaintiff herein:

AS A FIRST DEFENSE

I.

Alleges that he is without knowledge or information sufficient to form a belief as to the truth of any or all of the allegations contained in paragraphs 1, 4, 5, 6, 7, and 8.

II.

Admits that Itasca County is a political subdivision of the State of Minnesota and that both the State of Minnesota and its political subdivisions exercise, an attribute of sovereignty, civil and criminal jurisdiction over persons and property within their boundaries, but denies the remainder of paragraph 2.

III.

Admits that the assessment, levy, and collection of personal property taxes is carried out in accordance

with applicable laws, including the Minnesota Statutes enacted by the Minnesota Legislature, but denies the remainder of paragraph 3.

IV.

Except as hereinbefore admitted, qualified, or otherwise answered, defendant denies each and every allegation in said Complaint contained.

AS A SECOND DEFENSE

I.

Alleges that plaintiffs' Complaint fails to state a claim against the defendant State of Minnesota upon which relief can be granted.

AS A THIRD DEFENSE

I.

Alleges that the Court lacks jurisdiction over the subject matter of the plaintiff's Complaint since plaintiff has not complied with the provisions of Minn. Stat., Chap. 277.

AS A FOURTH DEFENSE

I.

Alleges that the Court may not render or enter a declaratory judgment or decree in this case since such a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to these proceedings.

AS A FIFTH DEFENSE

I.

Alleges that the Court may not grant the relief requested by plaintiff since plaintiff has an adequate remedy at law under Minn. Stat., Chap. 277, and since injunction will not lie to restrain the collection of a

personal property tax, enforceable under the general tax laws, on the sole ground that it is illegal, *Wall* v. *Borgen*, 152 Minn. 106, 188 N.W. 159 (1922), even though many taxpayers may be similarly situated and a single action would establish a precedent and settle a question as to all. *Bradish* v. *Lucken*, 38 Minn. 186, 36 N.W. 454 (1888).

AS A SIXTH DEFENSE

I.

Alleges that the present action can not be maintained as a class action pursuant to Rule 23 of the Minnesota Rules of Civil Procedure since the requirements of Rule 23.01 and 23.02 have not been and can not be met.

WHEREFORE, the defendant prays that the Court enter its judgment dismissing plaintiff's claim as set forth in its Complaint filed herein, and awarding the defendant State of Minnesota its costs and disbursements.

STATE OF MINNESOTA
Warren Spannaus
Attorney General

/s/ Ronald S. London
RONALD S. LONDON
Special Assistant
Attorney General
Centennial Office Building
St. Paul, Minnesota 55145

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, ET AL., PLAINTIFF

vs.

ITASCA COUNTY, ET AL., DEFENDANTS

STIPULATION OF FACTS

The undersigned attorneys representing the various parties in this action believe that the stipulation of facts in this case will promote the orderly trial and determination of issue; that there are no substantial disputes as to facts, and that formal establishment of the factual basis would not aid the court in consideration of the ultimate issues.

It Is Therefore Stipulated And Agreed, that the following facts may be accepted by the Court as true for the purposes of determination of issue herein.

1. Russell Bryan is an adult person, enrolled as a member of the Minnesota Chippewa Tribe on its official rolls; and is an "Indian" person as defined by the United States Statute.

2. That Russell Bryan lives, with his wife and family, in a 1972 Skyline Mobile home owned by him, which is his permanent and continuous residence. That the Mobile home has regular permanent connections for water, sewer and electric service.

3. That his mobile home residence is situated upon a parcel of ground within Sec. 17 or 18, Township 148 North, Range 27 West of the 5th Principal Meridian; and that the fee title to said parcel is held by the United States of America in Trust for the Chippewa Tribe of Minnesota; a condition of ownership which is usually

referred to as "Tribal Trust Land", and is within the exterior boundaries of the Greater Leech Lake Indian Reservation.

4. That Russell Bryan purchased the mobile home in about October 1971, and has had it situated on the above parcel of land since that time.

5. That in June 1972 he received a notice from Orten Hepola, Auditor of Itasca County that pursuant to the provisions of Minn. Stats. 168.012, Subd. 8, as amended by Laws 1961, Chap. 340, he had been assessed a tax liability on his mobile home for 2 months of 1971, amounting to $29.85, which became payable 30 days after the date of the notice to him.

6. That on or about July 20, 1972 he received a Personal Property Tax Statement from Robert Loscheider, Treasurer of Itasca County indicating a tax liability against him upon the value of the mobile home for the year 1972, amounting to the gross figure of $118.10.

7. That the tax involved is upon the personal property described as 2A in Minn. 272. 13, Subd. 3; imposed by authority of M.S. 272.01, Subd. 1; and, that Itasca County has not exercised its option under M.S. 272.61 to exempt from Taxation Class 2 property as described in M.S. 272.13.

8. That the Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe by the United States of America pursuant to the Act of June 18, 1934 (48 U.S. Stats. 984) as amended; under a Federal Charter of incorporation dated September 17, 1937 issued by Oscar L. Chapman, then Secretary of the Interior, and ratified by the Tribe on November 13, 1937. That in addition to that Charter, the Tribe operates under a Revised Constitution and By-Laws, (as amended) approved by the then Secretary of the Interior of the U.S. Government on March 3, 1964.

In Witness Whereof the undersigned parties have signed this 15th day of March, 1973.

For Plaintiff, Russell Bryan

/s/ Patrick J. Moriaty
Leech Lake Legal
Services

For Defendant, Itasca County

/s/ W. J. Spooner
W. J. SPOONER
County Attorney

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA, and the STATE OF MINNESOTA, by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

ORDER DISMISSING STATE OF MINNESOTA

On motion of the plaintiff herein,

IT IS ORDERED that the above-entitled matter be and the same is herewith dismissed as against the state of Minnesota by its Commissioner of Taxation, Art Roemer, as a party defendant.

Dated this 27th day of July, 1973.

BY THE COURT:

/s/ James F. Murphy
JAMES F. MURPHY
Judge of District Court

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA, and the STATE OF MINNESOTA, by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

JUDGMENT AND DECREE

The above entitled matter came on to be heard before the Honorable James F. Murphy, District Court Judge, in and Court house in the City of Grand Rapids, County of Itasca, State of Minnesota, on the 15th day of March, 1973, on a Stipulation of Facts as hereinafter set forth. Mr. William J. Spooner, Itasca County Attorney, appeared in behalf of the defendants; and Mr. Patrick J. Moriarty of Legal Services Project, Cass Lake, Minnesota appeared in behalf of the plaintiff. Mr. Moriarty, however, was subsequently replaced, and substituted in his place was a Mr. Nicholas M. Norden of Legal Services Project, Cass Lake, Minnesota.

The Court having reviewed the file, briefs, and being fully advised in the premises, and having made and filed its Findings of Fact, Conclusions of Law, and Order for Judgment.

PURSUANT TO SAID Findings of Fact, Conclusions of Law and Order for Judgment:

IT IS HEREBY ADJUDGED AND DECREED:

1. That the defendants are awarded a judgment against the Plaintiff, Russell Bryan, in the sum of $147.95, together with interest, costs, and disbursements.

Witnesseth, the Honorable James F. Murphy, District Court Judge, at Grand Rapids, Minnesota, this 8th day of December, 1973.

TYRUS L. BISCHOFF
Clerk of District Court

By: /s/ Ursula R. Peterson
Deputy

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

STATE OF MINNESOTA

COUNTY OF ITASCA

RUSSELL BRYAN, individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

ITASCA COUNTY, MINNESOTA, and the STATE OF MINNESOTA, by its Commissioner of Taxation, ART ROEMER, DEFENDANTS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above-entitled matter came on to be heard before the undersigned, one of the judges of the above named District Court, in the court house in the City of Grand Rapids, County of Itasca, State of Minnesota, on the 15th day of March, 1973, on a Stipulation of Facts as hereinafter set forth. Mr. William J. Spooner, Itasca County Attorney, appeared in behalf of the defendants; and Mr. Patrick J. Moriarty of Legal Services Project, Cass Lake Minnesota appeared in behalf of the plaintiff. Mr. Moriarty however, was subsequently replaced, and substituted in his place was a Mr. Nicholas M. Norden of Legal Services Project, Cass Lake, Minnesota.

The Court having reviewed the file, briefs having been filed herein—the last brief having been filed on or about August 27, 1973—and the Court being fully advised in the premises, now makes the following:

FINDING OF FACT

1. That Russell Bryan is an adult person, enrolled as a member of the Minnesota Chippewa Tribe on its official rolls; and is an "Indian" person as defined by the United States statute.

2. That Russell Bryan lives, with his wife, and family, in a 1972 Skyline mobile home owned by him, which is his permanent and continuous residence. That the mobile home has regular permanent connections for water, sewer, and electric service.

3. That his mobile home residence is situated upon a parcel of ground within Sec. 17 or 18, Township 148 North, Range 27 West of the 5th Principal Meridian; and that the fee title to said parcel is held by the United States of America in Trust for the Chippewa Tribe of Minnesota; a condition of ownership which is usually referred to as "Tribal Trust Land", and is within the exterior boundaries of the Greater Leech Lake Indian Reservation.

4. That Russell Bryan purchased the mobile home in about October, 1971, and has had it situated on the above parcel of land since that time.

5. That in June, 1972, he received a notice from Orten Hepola, Auditor of Itasca County, that pursuant to the provisions of Minn. Statutes 168.012, Subd. 8, as amended by Laws 1961, Chapter 340, he had been assessed a tax liability on his mobile home for two months of 1971, amounting to $29.85, which became payable 30 days after the date of the notice to him.

6. That on or about July 20, 1972, he received a Personal Property Tax Statement from Robert Loscheider, Treasurer of Itasca County, indicating a tax liability against him upon the value of the mobile home for the year 1972, amounting to the gross figure of $118.10.

7. That the tax involved is upon the personal property described as Class 2A in Minn. Statutes 272.13, Subd. 3; imposed by authority of M.S. 272.01, Subd. 1: and that Itasca County has not exercised its option under M.S. 272.61 to exempt from taxation Class 2 property as described in M.S. 272.13.

8. That the Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe the United States of America pursuant to the Act of June 18, 1934 (48 U.S. Stats. 984) as amended: under a Federal Chapter of incorporation dated September 17, 1937, issued by Oscar

L. Chapman, then Secretary of the Interior, and ratified by the Tribe on November 13, 1937. That in addition to that Charter, the Tribe operates under a Revised Constitution and By-Laws, (as amended) approved by the then Secretary of the Interior of the U.S. Government on March 3, 1964.

9. That there is no claim that the 1972 Skyline mobile home is any part of the real estate, but is personal property.

AND from the foregoing, the Court makes the following:

CONCLUSIONS OF LAW

1. That the defendants are entitled to judgment against the plaintiff, Russell Bryan, in the sum of $147.95 together with interests, costs and disbursements herein.

LET JUDGMENT BE ENTERED ACCORDINGLY 30 days from the date hereof.

Dated at Grand Rapids, Minnesota, this 8th day of November, 1973.

BY THE COURT

James F. Murphy
Judge of District Court

MEMORANDUM

The sole question before the Court as under the circumstances herein stipulated is: Can Russell Bryan be taxed for his personal property? The answer is yes. The Court must first distinguish between real estate taxes and personal property taxes. The difference between the two is that in personal property the taxes are enforced in personam, although assessed and imposed because of property ownership. Real estate taxes are assessed and enforced against the land itself.

The Court has reviewed the briefs of both parties in detail, and has read practically all of the citations cited therein, and the Court does adopt and there will be attached hereto a portion of the brief of the Commissioner of Taxation.

It must be remembered that the Leech Lake Indians were part of large Indian tribe, that once upon a time they were an Indian sovereign nation. There is no doubt that their claim to sovereignty long predates that of our own government. However, today that situation has changed because of treaties and laws to which they have permitted themselves to be governed. The Indians on the Leech Lake Reservation are today American citizens, residents of Minnesota. They have the right to vote, to use state courts, to use county courts, to serve on juries, and to have their civil and criminal matters determined in a manner the same as any other Minnesota resident. They likewise receive state and county services, such as police protection, equal rights, and right to serve in any political office, be it state, county, or city within or without the boundaries of the reservation.

The Leech Lake Reservation must be distinguished from Red Lake Reservation. The Red Lake Reservation is a closed reservation. The laws that apply to the Leech Lake Reservation do not apply to the Red Lake Reservation.

Exemptions from tax laws should, as a general rule, be clearly expressed. I am unable to find any expressed exemption by law, treaty or otherwise that would pre-

vent Itasca County from enforcing its personal property tax laws of the State of Minnesota against the person of the plaintiff or petitioner.

The plaintiff seems to rely upon the case of *McClanahan* v. *Arizona*, 36 L. ed. 2d, 129, decided March 27, 1973. However, it appears to the Court that the facts and the law are so different in the *McClanahan* case that the same is not applicable to the case now before the Court. For instance, Arizona does not come under USCA 1360. The *McClanahan* case further indicates that the Arizona reservation which is involved in that case is a closed reservation, while the Leech Lake Reservation is an open reservation. By Act of Congress, USCA 1360, the Indians, though Congress, gave to the State of Minnesota and its subsidiaries civil jurisdiction over the Leech Lake Reservation, except in certain instances which are not applicable to the stiuation here involved.

Because, as previously stated, there is a difference between the Leech Lake Reservation and the Red Lake Reservation, the Court quotes from the case of *Commissioner of Taxation* vs. *Brun*, 286 Minn. 43, p. 44; 174 NW 2d 120 (1970):

> "We have had occasion to consider the unique status of the Red Lake Band of Chippewa Indians in a number of cases. It is clear that members of this tribe occupy a status not common to *other* Indians in this state (underlining supplied by court). It would serve no useful purpose to discuss at length the unique status that this tribe enjoys or the reasons why the state cannot deal with them as it does with Indians in other parts of the state. It is enough to say that the Federal Government has not granted to the state civil or criminal jurisdiction over members of this tribe (Red Lake Tribe). As we have frequently said, when Congress enacted Public Law 280 (67 Stat. 588, 18 USCA § 1162, and 28 USCA § 1360) in 1953, which conferred on the state civil and criminal jurisdiction over other Indians in the state, it expressly excepted the Red Lake Reservation."

However, Leech Lake Indians living on the reservation do not enjoy such privileges as have been explained by them consenting to have the state assume jurisdiction over their civil and criminal rights.

The portion of the brief of the Commissioner of Taxation applicable to the situation here involved, being pages 2-20, is attached hereto and made a part hereof.

The Court throughout its deliberations on this matter has considered certifying this question to the Supreme Court; but after due deliberation it has determined that the defendants' claim of right to tax this personal property is sufficiently warranted by the laws of the State of Minnesota.

J. F. M.

ARGUMENT

I. ITASCA COUNTY MAY LEVY A NON-DISCRIMINATORY PERSONAL PROPERTY TAX AGAINST THE PERSONAL PROPERTY OWNED BY DEFENDANT WHO IS A CHIPPEWA INDIAN RESIDING ON THE LEECH LAKE RESERVATION.

The power to tax is inherent in sovereignty, In re *Petition of S.R.A., Inc.* 213 Minn. 487, 7 N.W. 2d 484 (1942), and the sovereignty of the State of Minnesota extends" * * * to all places within the boundaries . . . as defined in the constitution and, concurrently, to the waters forming a common boundary between this and adjoining states, subject only to such rights of jurisdiction as have been or shall be acquired by the United States over the places therein." Minn. Stat., Sec. 1.01. The M.S.A., Vol. 1, p. 169, also described the exterior geographic boundaries of the State of Minnesota without making any mention of or exception for Indian country within Minnesota; the enabling acts of certain other states (Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington), on the other hand, contain express disclaimers of state jurisdiction over Indian country within their states. This distinction in the various Enabling Acts is important since the United States Supreme Court has held that "Whenever, upon the admission of a State into the Union, Congress intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words."[1] *United States* v. *McBratney*, 104 U.S. (14 Otto) 621 (1881).

Furthermore, in 1953 Congress gave the State of Minnesota and its political subdivisions the right and power to tax Indians residing in the state by transferring full jurisdiction "over civil cases of action between Indians or to which Indians are parties." and providing that

[1] This statement was adopted by the Minnesota Supreme Court in *State* v. *Holthusen*, 261 Minn. 536, 113 N.W. 2d 180 (1962).

"those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory; * * *" (Emphasis added.) P.L. 83-280, 67 Stat. 588, 28 U.S.C.A., § 1360 (1953). The only Indian country excepted from this broad grant of civil jurisdiction to the State of Minnesota was the Red Lake Reservation.

Lastly, but certainly not least important, the Minnesota Constitution, Art. XV, Sec., specifically provides that:

> Persons residing on Indian lands within the State shall enjoy all rights and privileges of citizens,[2] as though they lived in any other portion of the state, *and shall be subject to taxation.* (Emphasis added.)

This provision of the present Minnesota Constitution was one of the original provisions included in the constitution drafted in response to Congress's passage of the Minnesota Enabling Act, which authorized the inhabitants of the territory of Minnesota to form a constitution and a state government. This constitution was debated by Congress during its deliverations on the question whether or not to admit Minnesota into the Union. *History of the Minnesota Constitution*, William Anderson (Univ. of Minn., 1921), pp. 130-131, 136-141. Congress eventually admitted Minnesota into the Union with the constitution, including Art. XV, Sec. 2, intact, Ibid., pp. 137-138. If Art. XV, Sec. 2, was contrary to Congressional policy, the Congress would have required Minnesota to change or delete this provision before voting affirmatively to accept Minnesota into the Union.

The sovereignty doctrine, P.L. 83-280 granting the State of Minnesota plenary civil and criminal jurisdic-

[2] Indians, who had not been previously accorded citizens status were declared to be citizens of the United States by Congressional Act on June 2, 1924. 43 Stat. 253, now codified at 8 U.S.C., § 140 (a)(2). As citizens of the United States, Indians are citizens of the State where they live. United States Con., Amend. 14, Sec. 1. See also Minn. Constitution Art. VII, Sec. 1.

tion over all Indian country except the Red Lake Reservation, and Minn. Constitution, Art. XV, Sec. 2, leave no room for doubt that the State of Minnesota and its political subdivisions have the right and the powers to tax the defendant's personal property located within their boundaries unless the defendant can affirmatively show that the State of Minnesota and its political subdivisions are prohibited from taxing such property by an Act of Congress or the United States Constitution.

II. ITASCA COUNTY IS NOT PROHIBITED FROM LEVYING A NON-DISCRIMINATORY PERSONAL PROPERTY TAX AGAINST THE PERSONAL PROPERTY OWNED BY THE DEFENDANT.

Defendant argues that Itasca County may not levy even a non-discriminatory property tax against her personal property since she is an Indian and Congress has not either expressly or impliedly granted the State of Minnesota and its political subdivisions the right to tax the property of an Indian. Although defendant cites several cases, including *Makah Indian Tribe* v. *Clallam County*, 73 Wash. 2d 677, 440 P. 2d 442 (1962), to support her position, that position is erroneous when applied to the present case since it fails to take account of changes in Congressional intent with respect to Indians in general and the Indians in Minnesota in particular. In order to pinpoint the error in this contention it is important to briefly examine a little Indian history.

It is true as stated by the defendant, that the Indians historically have had a unique relationship with the United States Government and thus also with states. But that relationship has changed drastically over the years. Justice Frankfurther summarized these changes in the case of *Organized Village of Kake* v. *Egan*, 369 U.S. 60, 82 S. Ct. 562 (1962):

> The relation between the Indians and the States has by no means remained constant since the days of

John Marshall.[3] In the early years, as the white man pressed against Indians in the eastern part of the continent, it was the policy of the United States to isolate the tribes on territories of their own beyond the Mississippi, where they were quite free to govern themselves. The 1828 treaty with the Cherokee Nation, 7 Stat. 311, guaranteed the Indians their lands would never be subjected to the jurisdiction of any State or Territory. Even the Federal Government itself asserted its power over these reservations only to punish crimes committed by or against non-Indians. 1 Stat. 469, 470; 2 Stat. 139. See U.S.C. Section 1152.

As the United States spread westward, it became evident that there was no place where the Indians could be forever isolated. In recognition of this fact the United States began to consider the Indians less foreign nations and more as a part of our country. In 1871 the power to make treaties with Indian tribes was abolished, 16 Stat. 544, 566, 25 U.S.C. Section 71. In 1887 Congress passed the General Allotment Act, 24 Stat. 388, as amended, 25 U.S.C. Section 331-358, authorizing the division of reservation land among individual Indians with a view toward their eventual assimilation into our society. In 1885, departing from the decision in Ex parte Crow Dog, 109 U.S. 556, 3 S.Ct. 396, 27 L. Ed. 1030, Congress intruded upon reservation self-government to extend federal criminal law over several specified crimes committed by one Indian against another on Indian land, 23 Stat. 362, 385, as amended, 18 U.S.C. Section 1153; *United States* v. *Kagama* 18 U.S. 375, 6 S.Ct. 1109, 30 L.Ed. 228. Other offenses remained matters for the title, *United States* v. *Quiver*, 241 U.S. 602, 36 S.Ct. 699 60 L. Ed. 1196.

The general notion drawn from Chief Justice Marshall's opinion in Worcester v. *Georgia*, 6 Pet.

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[3] See, e.g., defendant's reference to *Worcester* v. *Georgia*, 6 Pet. 515 (1831), and subsequent cases on page 3 of her brief.

515; 561, 8 L. Ed. 483; The Kansas Indians 5 Wall. 737, 755-757, 18 L. Ed. 667; and the New York Indians, 5 Wall. 761, 18 L. Ed. 708, *that an Indian Reservation is a distinct nation within whose boundaries state law cannot penetrate, has yielded to closer analysis when confronted, in the course of subsequent developments, with diverse concrete situations. By 1880 the Court no longer viewed reservations as distinct nations. On the contrary, it was said that a reservation was in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law. Utah & Northern R. Co.* v. *Fisher*, 116 U.S. 28, 31, 6 S. Ct. 246, 247, 29 L. Ed. 542. In Landford v. Monteith, 102 U.S. 145, 26 L.Ed. 53 the Court held that process might be served within a reservation for a suit in territorial court between two non-Indians. In United States v. McBratney 104 U.S. 621, 21 S.Ct. 924, 45 L.Ed. 1032, and Draper v. United States, 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419, the Court held that murder of one non-Indian by another on a reservation was a matter for state law.

The policy of assimilation was reserved abruptly 1964. A great many allottees of reservation lands had sold them and disposed of the proceeds. Further allotments were prohibited in order to safeguard remaining Indian properties. The Secretary of Interior was authorized to create new reservations and to add lands to existing ones. Tribes were permitted to become chartered federal corporations with powers to manage their affairs, and to organize and adopt constitutions for their own self-government. 48 Stat. 984 986, 987, 988. These provisions were soon extended to Alaska, 49 Stat. 1250.

Concurrently the influence of state law increased rather than decreased. As the result of a report making unfavorable comparisons between Indian Service activities and those of the States, Congress in 1929 authorized the States to enforce sanitation and quarantine laws on Indian reservations, to make

inspections for health and educational purposes, and to enforce compulsory school attendance. 45 Stat. 1185 as amended. 25 U.S.C. Section 231, See Meriam, Problem of Indian Administration (1928); H.R. Rep. No. 2135, 70th Cong., 2d Sess. (1929); Cohen Handbook of Federal Indian Law, p. 83 (1945); United States Department of the Interior, Federal Indian Law (1958), pp. 126-127. In 1934 Congress authorized the Secretary of the Interior to enter into contracts with States for the extension of educational, medical, agricultural, and welfare assistance to reservations, 48 Stat. 596 25 U.S.C. Section 452, During the 1940's several States were permitted to assert criminal jurisdiction, and sometimes civil jurisdiction as well, over certain Indian reservations. E.G., 62 Stat. 1161; 62 Stat. 1224, 25 U.S.C.A. Sec. 232; 64 Stat. 845, 25 U.S.C.A. Sec. 233; 63 Stat. 705. A new shift in policy toward termination of federal responsibility and assimilation of reservation Indians resulted in the abolition of several reservations during the 1950's. E.g. 68 Stat. 250, 25 U.S.C.A. Section 891 et seq. (Menominees); 69 Stat. 718, 25 U.S.C.A. Section 564 et seq. (Klamaths).

In 1953 Congress granted to several States full civil and criminal jurisdiction over Indian reservations, consenting to the assumption of such jurisdiction by an additional States making adequate provision for this in the future. 67 Stat. 588, 18 U.S.C. Sec. 1162, 28 U.S.C. Section 1360, Alaska was added to the list of such states 1958, 72 Stat. 545. This statute disclaims the intention to permit States to interfer with federally granted fishing privileges or uses of property. Finally the sale of liquor on reservations has been permitted subject to state law, on consent of the tribe itself. 67 Stat. 586, 18 U.S.C. Section 1161. Thus Congress has to a substantial degree opened the doors of reservations to state laws, in marked contrast to what prevailed in the time of Chief Justice Marshall. (Emphasis added.) 39 U.S. at 71-75.

This summary shows how the pendulum of Congressional policy has shifted from a position of complete federal control over the Indians in an attempt to isolate them (both by physical separation and by relieving them of the white man's rights and responsibilities) from the white man's society to a position of attempting to assimilate the Indians into the white man's society by transfering federal control to the states, thereby giving the Indians both the same rights and responsibilities shared by all other citizens. In other words, while at one time Congress exercised complete and exclusive jurisdiction over Indians, which meant that the states could exercise such jurisdiction only when it was expressly or impliedly granted to them by Congress, now, however, Congress has surrendered such jurisdiction to *certain* states such as Minnesota (P.L. 83-280) and these state may exercise that jurisdiction except where prohibited by the Constitution or an Act of Congress.

The *Makah* decision, as well as the other authority cited by the defendant, must be viewed in the light of this historical background. When the *Makah* decision is compared with the later Washington Supreme Court decision in *Tonasket* v. *State of Washington*,[4] 79 Wash. 2d 607, 488 P.2d 281 (1971), it is clear that the decision in *Makah* is based on the fact that Congress had not transferred plenary jurisdiction over the *Makah* Indian Tribe to the State of Washington and the State of Washington had not assumed such jurisdiction under Sec. 6 and 7 of Public Law 83-280. The Court in *Makah* also specifically pointed out that Articles 26 of the Washington constitution declares that (440 P.2d at 445)

> Indian lands shall remain under the absolute jurisdiction and control of the United States * * *.

Minnesota, on the other hand, has been granted plenary jurisdiction over all Indian country in Minnesota (except for the Red Lake Reservation) by P.L. 83-280, and Minnesota's Constitution specifically provides that Indi-

[4] See discussion of this case at pp. 15-18, infa. A copy of this case is contained in Appendix B for the Court's reference.

ans shall be subject to taxation. Minnesota Const. Art. XV. Sec. 2. The rule which the defendant cites from the *Makah* case is applicable only in those states which have not been granted or have not assumed plenary jurisdiction over the Indian country within their borders; and it is the reverse of the rule which is applicable in states which have jurisdiction over Indian country. Defendant's private property is therefore subject to taxation on the same basis as the private property of other citizens unless such taxation is expressly or impliedly prohibited.

A. THERE IS NO EXPRESS PROHIBITION AGAINST TAXING THE PROPERTY OF THE DEFENDANT IN QUESTION.

Defendant has cited no provision of the United States Constitution which expressly prohibits the State of Minnesota and its political subdivisions from taxing the personal property owned by the defendant since no such express prohibition exists. Defendant does imply, however, that an express prohibition against such taxation is contained in subdivision (b) of 28 U.S.C.A., Sec. 1360, which was the part of P.L. 83-280 transferring civil jurisdiction to certain states. Subdivision (b) provides in relevant part that:

> Nothing in this section (conferring civil jurisdiction over Indian country on certain states) shall authorize the alienation, encumbrance, or taxation of any real or personal . . . belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; * * * (Emphasis added.)

Subdivision (b) shows that Congress contemplated that the states may tax any real or personal property that is NOT "held in trust by the United States" or is NOT "subject to a restriction against alienation imposed by

the United States.[5] Since the personal property owned by the defendant which Itasca County is seeking to tax is not held in trust by the United States nor is it subject to a restriction against alienation imposed by the United States, such property is subject to taxation pursuant to Subdivision (a) of 28 U.S.C.A., Sec. 1360, which provides in part "those civil laws of such State or Territory that are of general application to *private persons* or *private property* shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory: * * * (Emphasis added). This distinction between trust or restricted property and non-trust or non-restricted property is also crucial in disposing of defendant's main contention that there is an implied prohibition against the taxation of defendant's personal property.

B. There Is No Implied Prohibition Against Taxing The Personal Property Of The Defendant.

The thrust of defendant's Contentions I and II, and the argument presented in support thereof, is that there is an implied prohibition on Itasca County's right to tax the defendant's personal property. More, particularly, the defendant's argument is that Itasca County is prohibited from taxing the personal property of the defendant under the instrumentality (inter-governmental immunity) doctrine. As examination of the instrumentality doctrine and the cases which defendant cites shows that the doctrine is inapplicable in the present case.

The instrumentality doctrine protects against interference with federal policy by state and local taxation.

[5] There is no doubt that real estate held in trust by the United States or subject to a restriction against alienation imposed by the United States was not subject to taxation even before the passage of P.L. 83-280. The dicta in Kirkwood v. Arenas, 243 F.2d 863, 865-866 (1957), referred to by defendant on page 8 of her brief that "The quoted part of the Act (28 U.S.C.A. § 1360(b)), however, is entirely consistent with, and in effect is a reaffirmation of, the law as it stood prior to its enactment . . ." is thus undisputed. But, as stated by the same court the rule is that in order to be immune from tax, it must be shown that the property was exempted by Congress from direct taxation. 243 F.2d at 865.

Rooted in Justice Marshall's often quoted declaration that "the power of taxing (a federal instrumentality) by the states may be exercised so as to destroy it" *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 427 (1819),[6] the instrumentality doctrine involved as means of preventing the taxation, and potential control of one's government's functions by another.

But as the instrumentality doctrine expanded, subsequent courts reacted to the fear that local governments were being deprived of too much tax revenue and they attempted to establish a test that would balance the conflicting interests of governmental sovereignty and the state's power of taxation. One solution was to distinguish an instrumentality's governmental function from its property, exempting only the former on the theory that this would sufficiently protect against interference with federal policy. Most courts have followed this distinction, with the result that some taxes on property have been upheld even though they imposed a financial burden on the governmental instrumentality or on the government itself. E.g., *Oklahoma Tax Comm'n* v. *Texas Co.*, 336 U.S. 342 (1948) (holding a lessee of mineral rights on restricted Indian land liable to non-discriminatory state gross production and excise taxes); *Taber* v. *Indian Terr. Illuminating Co.* 300 U.S. 1 (1937) (upholding a nondiscriminatory state ad valorem tax on equipment used by a private corporation operating for oil on restricted Indian land); *Alabama* v. *King & Boozer*, 314 U.S. 1 (1941) (upholding a sales tax on building materials bought for use in performing a cost-plus Government contract); and *United States* v. *Detroit* 335 U.S. 466 (1958) (upholding a tax on a lessee's

[6] Chief Justice Marshall endeavored to make it clear that the court's holding went no further than to strike down taxes which discriminated against the activities of the federal government. Marshall said that the decision should not be interpreted as extending to "a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State." 170 U.S. at 436.

business conducted on tax-exempt United States land, even though the taxes paid were deductible from the rent). These decisions did not deny that taxes that *directly* interfere with governmental function are illegal; they ruled that imposition of a pure financial burden on the federal government or its agents is generally too remote an interference with the governmental policy to be valid. See e.g. *Taber* v. *Indian Illuminating Co.*, supra. There is ordinarily no need to protect federal policy by invalidating such a tax because the courts can prevent a destructive effect when the situation arises, as Justice Holmes asserted in answer to Justice Marshall: "The power to tax is not the power to destroy while this Court sits." *Panhandle Oil Co.* v. *Mississippi ex rel. Knox*, 277 U.S. 218, 223 (1928), dissenting opinion.

With this background on the instrumentality doctrine it becomes easy to see why the defendant's assertion that the instrumentality doctrine prevents Itasca County from levying a non-discriminatory property tax against her personal property cannot be sustained. First, it is too late in the day for the defendant to argue that the Indians themselves are the federal instrumentalities and therefore *any* tax imposed upon an Indian is invalid. See, e.g. *Kake* v. *Egan*, supra. The cases cited by defendant show that it is not the Indians themselves, but *certain* property owned or used by the Indians under *certain* circumstances which is the federal instrumentality. A review of the cases cited show that the property which was exempted from taxation under this doctrine, with the exception of the *Makah* case,[7] was either real estate held in trust by the United States (or permanent improvements thereon which became part of the real estate), real property subject to restrictions on alienation, personal property given to the Indians by the United States under specific federal law or federal assistance program, or property derived from such property through sale and repurchase or otherwise. Defend-

[7] As pointed out on pp. 8-9, ante, the Makah case is distinguished on other grounds which make its hold erroneous if applied to the circumstances of this case.

ant's property does not fall into any of these categories. Thus, there is no federal instrumentality to which the instrumentality doctrine can apply in this case, other than the tribal trust land which the defendant leases. The United States Supreme Ccurt has held many times, that the instrumentality doctrine does not prevent the states or their political subdivision from taxing either the lessees of government lands or their property.

Second, the tax which Itasca County seeks to impose does not interfere with any federal policy. In fact, the imposition of the tax in question actually supports federal policies as enunciated by Congress. This conclusion was confirmed by the Washington Supreme Court in *Tonasket* v. *State of Washington*, 79 Wash. 2d 607, 488 P. 2d 282 (1971) where a full-blooded Indian commenced a declaratory judgment action asking the court to declare his right to do business with Indians and non-Indians on allotted Indian land held in trust by the federal government free of the requirements of state laws pertaining to the collection and remission of retail sales taxes. The relief sought was denied and the plaintiff appealed. The Washington Supreme Court affirmed the decision on the trial court which had held that the assumption of civil and criminal jurisdiction over the tribe of Indians in question pursuant to P.L. 83-280 was plenary, with only the limitation expressed therein, and such jurisdiction gave the states the power to regulate the activities of Indians in the same way that they regulate the activities of their citizens generally. In affirming the lower court's decision the Washington Supreme Court discussed Congressional intent in passing P.L. 83-280:

> If there were any doubt in our minds that it was the *intent of Congress* to make all the laws of the state, with their benefits and their burdens, applicable to the consenting tribes, and their members (with exceptions noted), that doubt would be resolved by an examination of the committee report upon which the Congress acted when it passed Public Law No. 83-280. We think the purpose is mani-

fest in the language used in the act, giving it its ordinary and commonly understood meaning, and the record shows that the purpose expressed was indeed the purpose intended.

In Senate Report No. 699,[8] which repeates in substance House Report No. 848 on House Resolution 1063 (which became Public Law No. 83-280 the following statement regarding the act and certain companion legislation appears:

> Your Committee on Interior and Insular Affairs through its Indian Affairs Subcommittee, and with continuing cooperation of the Secretary of the Interior and the Indian Bureau, has, during this session, operated in five major areas of legislation affecting the Indians. This legislation, whether before the House or presently under committee consideration, has two coordinate aims: First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and second termination of the subjection of Indians to Federal laws applicable to Indians as such.

Upon the question of civil jurisdiction, the report stated:

> Similarly, the *Indians of several States have reached a state of acculturation and development that makes desireable extension of State civil jurisdiction to the Indian country within their borders.* Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and *to extend to those reservations the substantive civil laws of the respective states insofar as those laws are of general application to private persons or private property, is deemed desireable.*

After consideration of the proposed legislation, the committee concluded that: any legislation in this area should be on a general basis, making provision for all

[8] The full text of Senate Report No. 699 is reproduced in Appendix A for the convenience of the Court.

affected States to come within its terms; that the attitude of the various States and the Indian groups within those States on the jurisdiction transfer question should be heavily weighed before effecting transfer; and that any recommended legislation should retain application of Indian tribal customs and ordinances to civil transactions among the Indians, *insofar as these customs or ordinances are not inconsistent with applicable State laws.*

We cannot conceive that it was the intent of Congress to extend to Indians only the protection and benefits of State laws, with none of their attendant duties and responsibilities, and we find no such intention expressed in the statute. True, there are certain immunities and protections afforded the Indians in the enjoyment of their trust properties and their rights of fishing, trapping and hunting. These place the Indian in a position of advantage not shared by other citizens. (Emphasis added.) 488 P.2d at 285-286.

P.L. 83-280 also granted the State of Minnesota plenary civil and criminal jurisdiction over the Leech Lake Reservation and, as stated by Congress and the Court in *Tonasket*, the intent of this legislation was to subject Indians to the laws of the states, both to their benefits and their burdens,[9] "insofar as those laws are of general application to private persons or *private property* . . ." (Emphasis added). U.S. Cong. & Admin. News, p. 2412 (1953). The instrumentality doctrine cannot be used as an implied prohibition against the imposition of the property tax in question since the imposition of the tax actually helps implement, rather than interferes with,

[9] The background history of P.L. 83-280 states, for example, that:

> Congress has many times in the past considered and enacted legislation having as its purpose payment of current tribal income on a pro rata basis to individual members of each tribe where such payments are consistent with the point of safety in the protection of the tribe as a whole. Such payments recognize *the responsibility of the tribe and of individual members to contribute a fair share of services enjoyed by them.* U.S. Cong. & Admin. News, p. 2410-2411 (1953).

federal policy as stated by the Congress in Senate Report No. 699.

Finally in this connection, it should be noted by this Court, as was done by the court in State Tax Commissioner v. Barnes, 178 N.Y.S. 2d 932 (1938), that in relatively recent times when Congress wished a tribe of Indians of their property to be free from state taxation, Congress expressly provided for such exemption.

See e.g., 25 U.S.C.A., Sec. 233, 48 Stat. 984; and 49 Stat. 1967. This is exactly what Congress did in P.L. 83-280 when it provided that Indians were to be subject to the same laws that applied to other citizens and their private property, yet also providing as an exception to that rule that property held in trust by the United States or subject to taxation. Since the personal property of the defendant which Itasca County is seeking to tax is not held in trust by the United States nor subject to restrictions against alienation imposed by the United States, the conclusion that this property is taxable on a non-discriminatory basis is inescapable.

In Summary, the argument and cases advanced by the defendant in an attempt to avoid paying her fair share of the burden connected with the benefits she receives from her local government are not applicable in the present case for one or more of the following reasons:

1. Present federal policy is to assimilate the Indians in Minnesota (except for the Red Lake Band) into the white man's society by subjecting them to the benefits and the same burdens as other citizens.

2. The property sought to be taxed by Itasca County is not property held in trust by the United States, is not property subject to restrictions on alienation imposed by the United States, is not property given to the defendant by the United States pursuant to a federal law or federal assistance program, and it is not property derived from such property by sale and repurchase, or otherwise.

3. The federal government which had exercised full and exclusive jurisdiction over Indians has now granted that jurisdiction to certain states, including Minnesota, in accordance with its policy of subjecting Indians and

their property to the same state laws to which other private persons and their property are subject.

The Chippewa Indians in Minnesota (except for the Red Lake Band) have determined that they wish to be subject to the same laws as the other citizens of the State of Minnesota, U.S. Cong. & Admin. News, p. 2412 (1953), Congress has so provided, P.L. 83-280, and Itasca County is exercising its sovereign power to tax accordance with that determination.

Finally, it should be remembered that it is fundamental rule of taxation that taxation is the rule, and exemption is an exception in derogation of equal rights, and that exemptions from taxation must be strictly construed. *Camping and Education* v. *State*, 282 Minn. 245, 164 N.W. 2d 369 (1969).

44947

[Endorsed—Filed March 28, 1975, John McCarthy, Clerk, Minnesota Supreme Court]

RUSSELL BRYAN, Individually, and on behalf of All Other Persons Similarly Situated, APPELLANT

vs.

ITASCA COUNTY, MINNESOTA, RESPONDENT

SYLLABUS

The State of Minnesota, or its political subdivisions, may impose a personal property tax upon a mobile home owned and occupied by an enrolled member of the Chippewa Tribe of Minnesota who resides within a Chippewa reservation upon land held in trust by the United States Government for the tribe.

Affirmed.

Considered and decided by the court en banc.

OPINION

YETKA, Justice.

This is an appeal from a judgment of the district court, holding plaintiff, an enrolled member of the Minnesota Chippewa Tribe,[1] liable for the payment of personal property taxes on his mobile home.[2] We affirm.

Plaintiff is the owner of a certain 1972 Skyline mobile home, in which he resides with his wife and family.

[1] The Minnesota Chippewa Tribe is organized and recognized as an Indian Tribe by the United States pursuant to the Act of June 18, 1934 (48 Stat. 984) as amended, under a Federal charter of incorporation issued by the then Secretary of Interior, and ratified by the tribe on November 13, 1937.

[2] The taxes challenged by plaintiff were imposed for the years 1971 and 1972 pursuant to the applicable provisions of Minn. St. 168.012, subd. 9, and § 272.01, subd. 1. Mobile homes during 1971 and 1972 were classified as 2a property. Minn. St. 273.13, subd. 3.

The mobile home is located on land held in trust for the Chippewa Tribe of Minnesota by the United States Government within the boundaries of the Greater Leech Lake Indian Reservation.

On September 12, 1972, plaintiff commenced an action in the District Court of Itasca County, seeking declaratory and injunctive relief from the tax in question on grounds the county has no authority to levy such a tax upon plaintiff and others similarly situated.

The matter was heard by the district court on March 15, 1973, which thereafter issued findings of fact and conclusions of law determining that plaintiff was not immune from the personal property tax. Plaintiff appeals from the judgment entered on December 8, 1973.

The issue raised on this appeal is whether the State of Minnesota, or its political subdivisions, may impose a personal property tax upon a mobile home owned and occupied by an enrolled member of the Chippewa Tribe of Minnesota who resides within a reservation upon land held in trust by the United States government for the tribe.

As will be shown hereafter, Indians have traditionally enjoyed a unique status both under decisions of this court and those of the Federal judiciary. It has been uniformly held that no state may levy a tax upon an Indian tribal member unless authorized by Congress to do so.

In the recent case of *McClanahan* v. *Arizona Tax Comm.* 411 U.S. 164, 93 S. Ct. 1257, 36 L. ed. 2d 129 (1973), the court was confronted with an attempt by the State of Arizona to impose a state income tax upon the income of an enrolled member of the Navajo tribe who lived and derived her income from activities upon the reservation. The court held the tax imposition to be unlawful on grounds that no treaty or Federal law authorized this tax. It is relevant to note that Arizona was not in included within the scope of Public Law 280, 67 Stat. 583,[3] 18 USCA, § 1162, and 28 USCA, § 1360. The court stated:

[3] Subsequently amended by 69 Stat. 795, 72 Stat. 545, and 84 Stat. 1358.

> "* * * 'State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to State taxation except by virtue of express authority conferred upon the State by act of Congress.' U.S. Dept. of the Interior, Federal Indian Law 845 (1958) (hereafter Federal Indian Law)." 411 U.S. 170, 93 S. Ct. 1261, 36 L. ed. 2d 135.

In Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. ed. 2d 114 (1973), a companion case of McClanahan, the court was confronted with an attempt by the State of New Mexico [4] to impose a tax upon receipts of a ski resort operated by plaintiff tribe under the auspices of the Indian Reorganization Act upon land leased from the United States Forest Service. The state also imposed a compensating use tax upon the purchase price of materials used to construct ski lifts upon the leased property.

The court upheld the receipts tax upon the ground that off-reservation Indian activities are subject to more extensive state authority. The court then held such activities were subject to state law, absent express Federal law to the contrary.

However, the court held the ski-lift equipment to be exempt from state taxation because that equipment had been permanently attached to the realty and thus it was exempt in the same manner as was the land itself.

Mescalero is relevant to our inquiry as a reaffirmance of the principle that—

> "* * * in the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no statutory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan* v. *Arizona State Tax Comm'n*, *supra*, lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent." 411 U.S. 148, 93 S. Ct. 1270, 36 L. ed. 2d 119.

[4] New Mexico was not included within the scope of 67 Stat. 589, as amended, 18 USCA, § 1162, and 28 USCA, § 1360.

Therefore, the current status of the law as set forth in McClanahan and Mescalero may be summarized as follows:

(1) The doctrine of Indian sovereignty is relevant as a backdrop in determining the applicability of state laws to reservation Indians.

(2) Congress has plenary jurisdiction over reservation Indians. That jurisdiction may be ceded to the states only by express grants of jurisdiction. In absence of such grants, no state power exists.

Thus we must first determine whether Congress vested authority in the State or Minnesota to levy this tax upon a reservation Indian.

Defendant advances three sources of power to tax plaintiff:

(1) The Minnesota Enabling Act.[5]
(2) The Minnesota Constitution.[6]
(3) Public Law 280.[7]

The Minnesota Enabling Act is silent as to any Indian lands located within the territorial boundaries of Minnesota. Defendant points out that such is not the case with the enabling acts of certain of our sister states.[8] Thus, defendant concludes that state jurisdic-

[5] 11 Stat. 166.

[6] Minn. Const. art. 15, § 2, which subsequent to the commencement of this action was removed by the 1974 amendment to the constitution.

[7] 67 Stat. 588, as amended, 18 USCA, § 1162, and 28 USCA, § 1360.

[8] Arizona and New Mexico, 36 Stat. 557; Montana, North Dakota, South Dakota, and Washington, 25 Stat. 676, 677; Oklahoma, 34 Stat. 267; and Utah, 28 Stat. 107. The Arizona statute is typical, providing that Indian lands in Arizona shall remain "under the absolute jurisdiction and control" of the United States. 36 Stat. 557, 569.

tion, including the power to tax reservation Indians, was granted by the enabling act.

Defendant also contends that Article 15, § 2, of the Minnesota Constitution [9] expressly allows for taxation of Indians and was approved by Congress. However, the above two arguments must fail in light of State v. Jackson, 218 Minn. 429, 16 N.W. 2d 752 (1944). That case involved an attempt by the state to enforce its game laws against a reservation Indian while upon the reservation. In holding such Indians immune from prosecution under state game laws, this court stated:

> "* * * But it is as uniformly held that, absent a treaty or federal statute conferring it, a state's jurisdiction does not extend over the individual members of an Indian tribe maintaining their tribal relations and organization upon a reservation within the geographical limits of the state. Such tribes are domestic, dependent communities under the guardianship, protection, and exclusive jurisdiction of the federal government, with the power of regulating their own internal and social relations, except as otherwise directed by congress. * * *
>
> "The admission of a state into the Union, even without an express reservation by congress of governmental jurisdiction over the public lands within its borders, does not qualify the former federal jurisdiction over tribal Indians so as to withdraw from the United States authority to punish crimes committed by or against Indians on an Indian reservation (Donnelly v. United States, *supra*), or so as to make tribal Indians amenable to state laws for crimes committed on their reservation. United States v. Kagama, *supra*; 27 Am. Jur., Indians, § 47. Whatever rights a state acquires by its Enabling

[9] Minn. Const. art. 15, § 2, prior to its removal in 1974, stated:

"§ 2. Residents on Indian lands

"Sec. 2. Persons residing on Indian lands within the State shall enjoy all rights and privileges of citizens, as though they lived in any other portion of the State, and shall be subject to taxation."

> Act are subordinate to the Indians' prior right of occupancy. United States v. Thomas, 151 U.S. 577, 583, 14 S. Ct. 426, 428, 38 L. ed. 276, 278; Tulee v. Washington, 315 U.S. 681, 62 S. Ct. 862, 86 L. ed. 1115; State v. Cooney, 77 Minn. 518, 80 N.W. 696." 218 Minn. 431, 16 N.W. 2d 754.

The language of Public Law 280 lends support to defendant's assertion of power to levy the tax at issue. Specifically, 28 USCA § 1360, provides as follows:

> "(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, *and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:*

"State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." (Italics supplied.)

Defendant logically argues that unless paragraph (a) is interpreted as a general grant of the power to tax, then the exceptions contained in paragraph (b) are limitations on a nonexistent power.

Plaintiff contends that Public Law 280 was intended as a "law and order" statute not intended to grant such sweeping powers to state and local governments.

A review of the legislative history of the act discloses that this provision was enacted in furtherance of the congressional policy of "termination" as expressed in H.R. Con. Res. 108, 83rd Cong. 1st Sess., 67 Stat. B 132, which states:

> "* * * (I)t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards

> of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and
>
> "* * * the Indians within the Territorial limits of the United States should assume their full responsibilities as American citizens."

At oral argument, one of the attorneys representing the United States Department of Interior advised this court that the government's policy of assimilation was no longer working, and the department now supports plaintiff's position. However, this court is bound to interpret the statutes according to the intent of Congress *at the time of passage* of Public Law 280. If Congress today intends a different result, it can easily repeal or modify Public Law 280. However, we accept the logic of defendants' position that it would make little sense for Congress to grant full civil and criminal powers to the State over all Indian territory and all Indian tribes in Minnesota (except the Red Lake Band) and specifically exempt certain property from taxation if the power to tax were not included within the original civil powers granted. See, Note, 39 Minn. L. Rev. 853.

The case most directly in point is a recent decision reached in the Federal District Court for the District of Nebraska in Omaha Tribe of Indians v. Peters, 382 F. Supp. 421 (D. Neb. 1974). That court held that Public Law 280 granted the State of Nebraska the power to levy a state income tax upon the income derived by an Indian from employment on the reservation. The following excerpts from the court's opinion are relevant:

> "* * * (I)t should be noted that P.L. 280 does not subject Indians to the jurisdiction of the state *by implication*. The statute is a clear and express grant of power subject only to the limitations stated in the ensuing sections of the statute. * * *
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> * * * *
>
> "* * * Given Congress' power to end the federal guardianship in total, it obviously has the power to establish an orderly program looking to the day

when the guardianship can be ended. That is precisely the type of program evidenced by the statute in this case. *See* U.S. Code Cong. & Admin. News, p. 2409 et seq. (1953). The statute also suggests that Congress felt that the termination of the federal guardianship over the affected tribes should result in their assimilation into the mainstream of life of the states wherein they are located. P.L. 280 is a step intended to prepare the Indian tribes for this assimilation by making all state laws applicable to Indians and in Indian country except as those laws may contravene the provisions of the statute itself.

* * * *

"The language and structure of P.L. 280 strongly suggests that Congress intended to convey to the states the authority to enforce its revenue laws in Indian country. *The statute grants civil jurisdiction to the states over causes of actions involving Indians as parties and states that the civil laws of general application shall have the same force and effect as to Indians and within Indian country as they have throughout the state. This grant of power is then modified in later subsections to permit the federal government to retain its authority in certain areas such as over Indian trust property.* One can only presume that the grant of jurisdiction in subsection (a) was to be considered plenary except as it was expressly limited by the statute. Any other interpretation of subsection (a) would require this Court to read into that section something which simply is not there. If Congress had intended to exempt Indians from the state's revenue laws, the Court feels certain that it would have expressly done so, as it exempted certain other Indian property from state jurisdiction in subsection (b) of P.L. 280, and as it expressly exempted reservation Indians from the provisions of the Buck Act. 4 U.S.C. § 109. By failing to qualify (sic) subsection (a) Congress has expressly subjected Indians and Indian country to *all* state laws of general

application including state revenue laws except where the application of those laws would violate one of the stated jurisdictional limitations in the statute.

"The above interpretation is strongly supported by the legislative history of P.L. 280. U.S. Code Cong. & Admin. News, pp. 2409, 2412 (1953) indicates that P.L. 280 was drafted because

> 'The Indians of several states have reached a stage of acculturation and development that makes desirable extension of States civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.'
>
> It was Congress' goal that this legislation be a step toward the day when the federal trusteeship over Indians could be finally ended through the assimilation of the tribes into the mainstream of life of the affected states. Id. at 2409; Williams v. Lee, *supra*, 358 U.S. at 220, 79 S. Ct. 269. There is no suggestion in either the legislative history of the Act, or in the language of the Act itself, that Congress intended that Indian tribes should derive the advantages of state law, while, at the same time, being shielded from its burdens." (Italics supplied in part.) 382 F. Supp. 424.

The Peters case appears to be the only case relevant to the instant inquiry. Defendant relies upon Agua Caliente Band of Mission Indians v. County of Riverside, 442 F. 2d 1184 (9 Cir. 1971), certiorari denied, 405 U.S. 933, 92 S. Ct. 930, L. ed. 2d 809 (1972). However, as plaintiff points out in his reply brief, that case dealt with an attempt to impose a leasehold tax upon a non-Indian. Commissioner of Taxation v. Brun, 286 Minn. 43, 174 N.W. 2d 120 (1970), is also not

relevant here. That case dealt with the Red Lake Band of Chippewa Indians, which occupies a distinct position and is not subject to Public Law 280. The recent case of *Tonasket* v. *State*, 84 Wash. 2d 164, 525 P. 2d 744 (1974), which reconsidered *Tonasket* v. *State*, 79 Wash. 2d 607, 488 P. 2d 281 (1971), upon remand from the United States Supreme Court, 411 U.S. 451, 93 S. Ct. 1941, 36 L. ed. 2d 385 (1973), is not particularly helpful since it actually dealt only with the narrow issue of the power of a state, following its assumption of jurisdiction over Indian tribes pursuant to Public Law 280, to impose a tax upon the sale of cigarettes within the reservation boundaries by an Indian seller to non-reservation customers.

Plaintiff's strongest argument lies in the application of rules of construction, the most prominent of which was repeated in McClanahan as follows:

> "The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read."[10] 411 U.S. 172, 93 S. Ct. 1262, 36 L. ed. 2d 136.

Plaintiff cites the absence of any specific grant of taxing power in Public Law 280 and thus characterizes the granting of such a power as doubtful.[11] Of course, herein lies the crux of the entire case. Defendant's position, and the opinion of the court in *Peters* is that Public Law 280 is a clear grant of the power to tax, and we so hold.

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[10] See, also, *Squire* v. *Capoeman*, 351 U.S. 1, 76 S.Ct. 611, 100 L. ed. 883 (1956); *Choate* v. *Trapp*, 224 U.S. 665, 32 S. Ct. 565, 59 L. ed. 941 (1912).

[11] In *Omaha Tribe of Indians* v. *Peters*, 382 F. Supp. 421, 425 (1974), the court stated that the rule of construction as set forth in *McClanahan* does not apply "when the taxing authority has jurisdictional power over the tribe." This statement presupposes resolution of the crucial question—whether jurisdiction in fact exists. Thus, the *McClanahan* rule of construction is applicable if in fact P.L. 280 contains a doubtful expression.

Although it is conceded that Indians have had a unique legal status in our society since earliest times, the various Indian tribes are not sovereign states. They only have such powers as Congress allows them to retain.

It has been the Federal government, through its vacillation in determining the best course to follow for over 100 years, that has led to the present confusion, including the issues raised by this lawsuit. The government first appears to move toward termination and assimilation, then to retreat from those objectives, and retrenches, this indecision has resulted in a great deal of confusion. However, insofar as Public Law 280 is concerned, we think the Federal District Court which decided the Peters case was correct when it stated:

> "The language and structure of P.L. 280 strongly suggest that Congress intended to convey to the states the authority to enforce its revenue laws in Indian country. * * * One can only presume that the grant of jurisdiction in subsection (a) was to be considered plenary except as it was expressly limited by the statute." 382 F. Supp. 426.

It appears to us that Congress must decide whether to continue the program of assimilation which was outlined in the Hoover Commission Report of 1949, and embodied in Public Law 280 or to return greater sovereign immunity to the various Indian tribes, including the return to them of full civil and criminal jurisdiction free from all state control, and the freeing of the states from some liability for the care, support and administration of the varoius Indian tribes. To choose the latter alternative without freeing the states of their responsibilities would appear to raise a serious question of violation of the equal protection clauses of both the United States Constitution and the Constitution of the State of Minnesota.

Plaintiff has, for the first time, alleged in his brief that his mobile home was in fact annexed to tribal trust land, and thus is exempt under Public Law 280. However, in his complaint plaintiff does not allege that

the mobile home is real property. In fact, paragraph 9 of his complaint states the defendant has no lawful authority "to assess or impose a tax upon his *personal property.*" (Italics supplied.) This entire lawsuit and appeal were predicated on the assumption that this mobile home was in fact personal property. The trial court in its findings stated:

> "That there is no claim that the 1972 Skyline mobile home is any part of the real estate, but is personal property."

Therefore, we do not rule as to whether the mobile home can be taxed if in fact it is permanently affixed to the realty and cannot be removed by the owner, and thus is assessable in the manner of real estate taxes. This court has repeatedly refused to decide issues first raised on appeal. *Rathbun* v. *W. T. Grant Co.* —— Minn. ——, 219 N.W. 2d 641 (1974); *Tourville* v. *Tourville*, 292 Minn. 489, 198 N.W. 2d 138 (1972).

In summary, the question raised is whether Public Law 280 provides authority for defendant to levy the tax at issue. The language of the act, case law, and logic lend support to defendant's position.

The trial court therefore must be and hereby is affirmed.

MR. JUSTICE KELLY and MR. JUSTICE KNUTSON took no part in the consideration or decision of this case.

STATE OF MINNESOTA, SUPREME COURT

44947

RUSSELL BRYAN, Individually, and on Behalf of All Other Persons Similarly Situated, APPELLANT

vs.

ITASCA COUNTY, MINNESOTA, RESPONDENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Itasca be and the same hereby is in all things affirmed.

Dated and Signed: April 10, 1975

BY THE COURT
Attest:
John McCarthy, Clerk.

STATE OF MINNESOTA)
) ss.
SUPREME COURT)

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the case therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol in the City of St. Paul, November 20, 1975.

John McCarthy, Clerk
By Wayne Tschimperle, Deputy.

(Transcript of Hearings on H.R. 1063 Before the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess. (1953). These hearings were not published. A transcript was produced by the United States during the briefing of Tonasket v. State of Washington, 411 U.S. 451 (1973).)

CONTENTS

STATEMENTS OF: PAGE

HARRY SELLERY, 2

Chief Counsel, Bureau of Indian Affairs; 12

Accompanied by

WILLIAM R. BENGE,

Chief, Branch of Law and Order.

H. R. 1063

Monday, June 29, 1953

House of Representatives,
Subcommiteee on Indian Affairs,
Committee on Interior and Insular Affairs,
Washington, D.C.

The subcommittee thereupon proceeded to the consideration of H.R. 1063, Honorable E. Y. Berry (chairman) presiding.

Mr. Berry. We will next take up H.R. 1063.

H. R. 1063

STATEMENT OF HARRY A. SELLERY, JR., CHIEF COUNSEL, BUREAU OF INDIAN AFFAIRS

Mr. Sellery. Mr. Chairman and members of the committee, H.R. 1063 is a bill to amend Title 18 of the United States Code entitled "Crimes and Criminal Procedure" with respect to State jurisdiction over offenses

committed by or against Indians in the Indian country and to confer on the State of California civil jurisdiction over Indians in that State.

The State now lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in Title 18, section 1151 of the United States Code, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was previously conferred.

The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of Title 18, United States Code. As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. Consequently, the Department believes there is a serious hiatus in law enforcement authority that can best be remedied by conferring jurisdiction on the State, and the Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063, and none of them have indicated any opposition to the enactment of a bill such as this. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have done likewise. The California Legislature has memorialized Congress in favor of this legislation and certain other legislation not before us this morning.

The Department recommends that the bill be recast in a form which is attached as a substitute bill which would, we believe, assist in the codification in this bill of the existing sections of the civil and criminal codes of Title 18 for the criminal aspects and Title 28 of the judicial code for the civil aspects. If this type of bill is adopted, we hope it may be a prototype and it will be possible to add Indians in other States in the code so that, from the point of view of an attorney looking into this matter, he will be able to the case what the State civil and criminal jurisdiction may be with respect to Indians of a particular State.

You will observe, for example, on page 2 of the draft substitute bill that in the case of California, the Indian country affected is that within the Federal-State civil and criminal jurisdiction, which will no longer obtain, as the State is given jurisdiction over all of the Indian country within the State.

It appears in the case of some of the other criminal and civil jurisdiction bills that the Department will recommend to the Congress that certain reservations be excepted where law and order are regarded as adequate and where the tribe affirmativly indicated its preference for confirmation under its law and order code. But this prototype form we believe will assist in cases of civil and criminal jurisdiction as showing quickly at places in the code where we believe it will be most helpful to attorneys and others what Indian country, if any, may be excepted from State civil and criminal jurisdiction.

It may also be observed that there are provisions in the bill which will, we believe, protect the rights of Indian groups without special recognition from the Congress in the form of a treaty, agreement, or statute with respect to hunting, trapping, or fishing or control of licensing and the regulation thereof, and with those protections both on the criminal side and the civil side in the bill it would mark a definite step forward in the inclusion into the general body of the people of the Indians of that particular State with respect to civil

and criminal jurisdiction, so that they will be subject to the same laws and the same rules as the other citizens.

The Department has recommended that the bill be adopted, but the suggestions of the substitute bill are intended to be of assistance in the uniform treatment of this and other bills.

In order to have it absolutely uniform with respect to California, it is recommended that section 1 of the Act of October 5, 1949, which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Agua Caliente Indian Reservation, be repealed so that there will be the same rule applicable to all Indians in the State.

I would direct your attention to the fact that the Department has submitted this report because of the express desire of the committee to have it without having first received prior clearance from the Bureau of the Budget. Hence the Department cannot make any commitment at this time concerning the relationship of the views of the Department to the program of the President. However, copies of this report have been submitted to the Bureau of the Budget, and it is hoped we will know within a few days whether or not they believe it is in accord with the program.

Mr. Berry. Are there any questions?

Mr. Saylor. You have listed in the substitute bill a method to have this as a prototype which will be used for other Indian tribes. You have started here with the State of California, and I would like to have submitted by the Department a recommendation not only with respect to the State of California but in regard to every other one of the western States that have Indians or every State that has Indians, including South Carolina, North Carolina, and Florida. This committee should know what the views of the Department are at the present time not only with regard to the Indians of California but in regard to all of the Indians in all of the States.

Mr. Sellery. I will see that that is done.

Mr. Saylor. Also what Indian country you would recommend, whether all Indian country within the State

or whether certain parts of the Indian country can be excepted.

Mr. D'Ewart. The phrase "Indian country" is already defined by law and has a very distinct meaning. It is defined in the recodification statutes adopted a very few years ago, and it is very clear.

Mr. Saylor. I think also the committee should have the benefit of the Department's views. You state there are certain sections of the Code which would not be applicable in the State of California and I think we should be advised of sections which would not be applicable not only to this law but any other law which might be affected if a similar Act were adopted for all of the Indians.

Mr. Sellery. I wonder if you may have misunderstood me. We are recommending that the State have civil and criminal jurisdiction over all Indians in the State of California and the concurrent jurisdiction of the United States in connection with the ten major crimes and similar criminal acts be ceded to the State so that there will be nothing except State jurisdiction in the State of California. There will be no exception.

Mr. Saylor. Then, I understood, as a second amendment you said you had here in this supplemental bill—was it not the purpose of making sure there would not be concurrent jurisdiction in the State and Federal Government?

Mr. Sellery. That is true.

Mr. Shuford. I think we in North Carolina have only one tribe of Indians—the Cherokees—although we have Indians in the eastern part of North Carolina. Are those under the supervision of the Bureau of Indian Affairs?

Mr. Sellery. Yes, sir; they are. The eastern band of Cherokees is separated from the balance of the North Carolina Indians.

Mr. Shuford. We also have Indians in the eastern part of North Carolina.

Mr. Sellery. I am advised they are not.

Mr. Shuford. I do not think that tribe has definitely been established by the courts.

Mr. Sellery. In any event, they are not under the jurisdiction of the Bureau of Indian Affairs.

Mr. Rhodes. I would like to request the Department to consider whether or not the State feels that the Indians within the State are ready for this type of jurisdiction and also whether the State itself is ready.

Mr. Sellery. In the case of California—I skipped over that point—the State has indicated its willingness.

Mr. Rhodes. I am thinking of Arizona as to what effect it might have on the law enforcement agencies of the State of Arizona and also whether the Indians of Arizona have expressed any views.

Mr. Sellery. I think such inquiries are in process with respect to other bills.

Mr. Young. Does your bill limit the provision for Federal assistance to States in defraying the increased expenses of the courts in connection with the widening of the jurisdiction that the bill encompasses?

Mr. Sellery. No; it does not.

Mr. Young. Do you think it would be necessary to provide for some payment, inasmuch as the great portion of Indian lands are not subject to taxation?

Mr. Sellery. The Department's report on the Nevada bill has some comments on that. If it is appropriate, I would like to read this in that connection. Generally, the Department's views are that if we started on the processes of Federal financial assistance or subsidization of law enforcement activities among the Indians, it might turn out to be a rather costly program, and it is a problem which the States should deal with and accept without Federal financial assistance; otherwise there will be some tendency, the Department believes, for the Indian to be thought of and perhaps to think of himself because of the financial assistance which comes from the Federal Government as still somewhat a member of a race or group which is set apart from other citizens of the State. And it is desired to give him and the other citizens of the State the feeling of a conviction that he is in the same status and has access to the same services, including the courts, as other citizens of the State who are not Indians.

Mr. Young. That would not quite be true, though; would it? Because for the most part he does not pay any taxes.

Mr. Sellery. No. There is that difference.

Mr. Young. A rather sizable difference in not paying for the courts or paying for the increased expenses for judicial proceedings.

Mr. Sellery. The Indians, of course, do pay other forms of taxes. I do not know how the courts of Nevada are supported financially, but the Indians do pay the sales tax and other taxes.

Mr. Young. But no income tax or corporation tax or profits tax. You understand a large portion of the land is held in trust and therefore is not subject to tax.

Mr. Sellery. That is correct.

Mr. Young. So far as my State is concerned, it would be a large burden on existing costs of judicial procedure. I think it is only right that the Federal Government should make some contribution for that. You seem to differentiate. I think there is a differentiation, too, in that they are not paying taxes.

Mr. Sellery. I will concede your point that they are not paying taxes. The Department has recommended, nevertheless, that no financial assistance be afforded to the States.

Mr. Berry. Is there no authority now for the Department to assist counties in this work?

Mr. Sellery. I am advised there is none.

Mr. D'Ewart. That is only partly true. The Tribal Council sometimes appropriates some funds to help pay the peace officer, and the counties sometimes appoint an Indian as deputy sheriff to cooperate with the towns.

Mr. Sellery. I think Congressman Berry was addressing himself to funds advanced by the Federal Government.

Mr. D'Ewart. Have you ever paid part of the salary of a sheriff?

Mr. Sellery. Mr. Benge, who is chief of our Law and Order Branch, advises me we have not.

Mr. D'Ewart. I was thinking of the Reindeer Reservation where part of that salary was paid. Maybe I am wrong. Maybe they were only using tribal funds.

Mr. Sellery. I think so. That is done in many cases, as you correctly observe.

(The subcommittee thereupon went into executive session.)

TREATY WITH THE CHIPPEWA, 1855

Articles of agreement and convention made and concluded at the city of Washington, this twenty-second day of February, one thousand eight hundred and fifty-five, by George W. Manypenny, Commissioner, on the part of the United States, and the following-named Chiefs and delegates, representing the Mississippi bands of Chippewa Indians, viz: Pug-o-na-ke-shick, or Hole-in-the-day; Que-we-sans-ish, or Bad Boy; Wand-e-Kaw, or Little Hill; I-awe-showe-we-ke-shig, or Crossing Sky; Petud-dunce, or Rat's Liver; Mun-o-min-e-kay-shein, or Rice-Maker; Mah-yah-ge-way-we-durg, or the Chorister; Kay-gwa-daush, or the Attempter; Caw-caug-e-we-goon, or Crow Feather; and Show-baush-king, or He that passes under Everything, and the following-named Chiefs and delegates representing the Pillager and Lake Winnibigoshish bands of Chippewa Indians, viz: Aish-ke-bug-e-koshe, or Flat Mouth; Be-sheck-kee, or Buffalo; Nay-bun-a-caush, or Young Man's Son; Maug-e-gaw-bow, or Stepping Ahead; Mi-gi-si, or Eagle, and Kaw-be-mub-bee, or North Star, they being thereto duly authorized by the said bands of Indians respectfully.

ARTICLE 1. The Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa Indians hereby cede, sell, and convey to the United States all their right, title, and interest in and to, the lands now owned and claimed by them, in the Territory of Minnesota, and included within the following boundaries, viz: Beginning at a point where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, east of the Mississippi River, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven, running thence, up the said branch, to its source; thence, nearly north in a straight line, to the mouth of East Savannah River; thence, up the St. Louis River, to the mouth of East Swan River; thence, up said river, to its source; thence, in a straight line, to the most westwardly bend of Vermillion River; thence, northwestwardly, in a straight line, to the first and most considerable bend in the Big Fork River; thence, down said river, to its mouth; thence, down Rainy Lake River, to the mouth of Black River; thence, up that river, to its source; thence in a straight line, to the northern extremity of Turtle Lake; thence, in a straight line, to the mouth of Wild Rice River; thence, up Red River of the North, to the mouth of Buffalo River; thence, in a straight line, to the southwestern extremity of Otter-Tail Lake; thence, through said lake, to the source of Leaf River; thence down said river, to its junction with Crow Wing River; thence down Crow Wing River, to its junction with the Mississippi River; thence to the commencement on said river of the southern boundary-line of the Chippewa country, as established by the treaty of July twenty-ninth, one thousand eight hundred and thirty-seven; and thence, along said line, to the place of beginning. And the said Indians do further fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere.

ARTICLE 2. There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians; the lands so reserved and set apart, to be in separate tracts, as follows, viz:

For the Mississippi bands of Chippewa Indians: The first to embrace the following fractional township, viz: forty-two north, of range twenty-five West; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and, also, the three islands in the southern part of Mille Lac. Second, beginning at the point half a mile east of Rabbit Lake; thence south three miles; thence westwardly, in a straight line, to a point three miles south of the mouth of Rabbit River; thence north to the mouth of said river; thence up the Mississippi River to a point directly north of the place of beginning; thence south to the place of beginning. Third, beginning at a point half a mile south-

west from the most southwestwardly point of Cull Lake; thence due south to Crow Wing River; thence down said river, to the Mississippi River; thence up said river to Long Lake Portage; thence, in a straight line, to the head of Gull Lake; thence in a southwestwardly direction, as nearly in a direct line as practicable but at no point thereof, at a less distance than half a mile from said lake, to the place of beginning. Fourth, the boundaries to be, as nearly as practicable, at right angles, and so as to embrace within them Pokagomon Lake; but nowhere to approach nearer said lake than half a mile therefrom. Fifth, beginning at the mouth of Sandy Lake River; thence south, to a point on an east and west line, two miles south of the most southern point of Sandy Lake; thence east, to a point due south from the mouth of West Savannah River; thence north, to the mouth of said river; thence north to a point on an east and west line, one mile north of the most northern point of Sandy Lake; thence west, to Little Rice River; thence down said river to Sandy Lake River; and thence down said river to the place of beginning. Sixth, to include all the islands in Rice Lake, and also half a section of land on said lake, to include the present gardens of the Indians. Seventh, one section of land for Pug-o-na-ke-shick, or Hole-in-the-day, to include his house and farm; and for which he shall receive a patent in fee-simple.

For the Pillager and Lake Winnibigoshish bands, to be in three tracts, to be located and bounded as follows, viz: First, beginning at mouth of Little Boy River; thence up said river to Lake Hassler; thence through the center of said lake to its western extremity; thence in a direct line to the most southern point of Leech Lake; and thence through said lake, so as to include all the islands therein, to the place of beginning. Second, beginning at the point where the Mississippi River leaves Lake Winnibigoshish; thence north, to the head of the first river; thence west, by the head of the next river, to the head of the third river, emptying into said lake; thence down the latter to said lake; and thence in a direct line to the place of beginning. Third, beginning

at the mouth of Turtle River; thence up said river to the first lake; thence east, four miles; thence southwardly, in a line parallel with Turtle River, to Cass Lake; and thence, so as to include all the islands in said lake, to the place of beginning; all of which said tracts shall be distinctly designated on the plats of the public surveys.

And at such time or times as the President may deem it advisable for the interests and welfare of said Indians, or any of them, he shall cause the said reservation, or such portion or portions thereof as may be necessary, to be surveyed; and assign to each head of a family, or single person over twenty-one years of age, a reasonable quantity of land, in one body, not to exceed eighty acres in any case, for his or their separate use; and he may, at his discretion, as the occupants thereof become capable of managing their business and affairs, issue patents to them for the tracts so assigned to them, respectively; said tracts to be exempt from taxation, levy, sale, or feiture; and not to be aliened or leased for a longer period then two years, at one time, until otherwise provided by the legislature of the State in which they may be situate, with the assent of Congress. They shall not be sold, or alienated, in fee, for a period of five years after the date of the patents; and then without the assent of the President of the United States being first obtained. Prior to the issue of the patents, the President shall make such rules and regulations as he may deem necessary and expedient, respecting the disposition of any of said tracts in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person; and should any of the Indians to whom tracts may be assigned thereafter abandon them, the President may make such rules and regulations, in relation to such abandoned tracts, as in his judgment may be necessary and proper.

ARTICLE 3. In consideration of, and in full compensation for, the cessions made by the said Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewa

Indians, in the first article of this agreement, the United States hereby agree and stipulate to pay, expend, and make provision for, the said bands of Indians, as follows, viz: For the Mississippi bands:

Ten thousand dollars ($10,000) in goods and other useful articles, as soon as practicable after the ratification of this instrument, and after an appropriation shall be made by Congress therefore, to be turned over to the delegates and chiefs for distribution among their people.

Fifty thousand dollars ($50,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum not required for the above-mentioned purpose shall be paid over to said Indians in the same manner as their annuity money, and in such installments as the said Secretary may determine; Provided, That an amount not exceeding ten thousand dollars ($10,000) of the above sum shall be paid to such full and mixed bloods as the chiefs may direct, for services rendered heretofore to their bands.

Twenty thousand dollars ($20,000) per annum, in money, for twenty years, provided, that two thousand dollars ($2,000) per annum of that sum, shall be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians, subject to the approval of the Secretary of the Interior.

Five thousand dollars ($5,000) for the construction of a road from the mouth of Rum River to Mille Lac, to be expended under the direction of the Commissioner of Indian Affairs.

A reasonable quantity of land, to be determined by the Commissioner of Indian Affairs, to be ploughed and prepared for cultivation in suitable fields, at each of the reservations of the said bands, not exceeding, in the aggregate, three hundred acres for all the reservations, the Indians to make the rails and inclose the fields themselves.

For the Pillager and Lake Winnibigoshish bands:

Ten thousand dollars ($10,000) in goods, and other useful articles, as soon as practicable, after the ratification of this agreement, and an appropriation shall be made by Congress therefore; to be turned over to the chiefs and delegates for distribution among their people.

Forty thousand dollars ($40,000) to enable them to adjust and settle their present engagements, so far as the same, on an examination thereof may be found and decided to be valid and just by the chiefs, subject to the approval of the Secretary of the Interior; and any balance remaining of said sum, not required for that purpose, shall be paid over to said Indians, in the same manner as their annuity money, and in such installments as the said Secretary may determine; provided that an amount, not exceeding ten thousand dollars ($10,000) of the above sum shall be paid to such mixed-bloods as the chiefs may direct for services heretofore rendered to their bands.

Ten thousand six hundred and sixty-six dollars and sixty-six cents ($10,666.66) per annum, for thirty years.

Eight thousand dollars ($8,000) per annum, for thirty years, in such goods as may be requested by the chiefs, and as may be suitable for the Indians, according to their condition and circumstances.

Four thousand dollars ($4,000) per annum, for thirty years, to be paid or expended, as the chiefs may request, for purposes of utility connected with the improvement and welfare of said Indians; subject to the approval of the Secretary of the Interior: Provided, That an amount not exceeding two thousand dollars thereof, shall, for a limited number of years, be expended under the direction of the Commissioner of Indian Affairs, for provisions, seeds, and such other articles or things as may be useful in agricultural pursuits.

Such sum as can be usefully and beneficially applied by the United States annually, for twenty years, and not to exceed three thousand dollars, in any one year, for purposes of education; to be expended under the direction of the Secretary of the Interior.

Three hundred dollars' ($300) worth of powder, per annum, for five years.

One hundred dollars' ($100) worth shot and lead, per annum, for five years.

One hundred dollars' ($100) worth of gilling twine, per annum, for five years.

One hundred dollars' ($100) worth of tobacco, per annum, for five years.

Hire of three laborers at Leech Lake, of two at Lake Winnibigoshish and of one at Cass Lake, for Five years.

Expense of two blacksmiths, with the necessary shop, iron, steel, and tools for fifteen years.

Two hundred dollars ($200) in brubbing-hoes and tools, the present year.

Fifteen thousand dollars ($15,000) for opening a road from Crow Wing to Leech Lake; to be expended under the direction of the Commissioner of Indian Affairs.

To have ploughed and prepared for cultivation, two hundred acres of land in ten or more lots, within the reservation at Leech Lake; fifty acres, in four or more lots, within the reservation at Lake Winibigoshish; and twenty-five acres, in two or more lots within the reservation at Cass Lake; Provided, That the Indians shall make the rails and inclose the lots themselves.

A saw-mill, with a portable gris mill attached thereto, to be established whenever the same shall be deemed necessary and advisable by the Commissioner of Indian Affairs, at such point as he shall think best; and which, together, with the expense of a proper person to take charge of and operate them, shall be continued during ten years: Provided That the cost of all the requisite repairs of the said mills shall be paid by the Indians, out of their own funds.

ARTICLE 4. The Mississippi bands have expressed a desire to be permitted to employ their own farmers, mechanics, and teachers; and it is therefore agreed that the amounts to which they are now entitled, under former treaties, for purposes of education, for blacksmiths and assistants, shops, tools, iron and steel, and for the em-

ployment of farmers and carpenters, shall be paid over to them as their annuities are paid: Provided, however, That whenever, in the opinion of the Commissioner of Indian Affairs, they fail to make proper provision for the above-named purposes, he may retain said amounts, and appropriate them according to his discretion, for their education and improvement.

ARTICLE 5. The foregoing annuities, in money and goods, shall be paid and distributed as follows: Those due the Mississippi bands, at one of their reservations; and those due the Pillager and Lake Winnibigoshish bands, at Leech Lake; and no part of the said annuities shall ever be taken or applied, in any manner, to or for the payment of the debts or obligations of Indians contracted in their private dealings, as individuals, whether to traders or other persons. And should any of said Indians become intemperate or abandoned, and waste their property, the President may withhold any moneys or goods due and payable to such, and cause the same to be expended, applied, or distributed, so as to insure the benefit thereof to their families. If, at any time, before the said annuities in money and goods of either of the Indian parties to this convention shall expire, the interests and welfare of said Indians shall, in the opinion of the President, require a different arrangement, he shall have the power to cause the said annuities, instead of being paid over and distributed to the Indians, to be expended or applied to such purposes or objects as may be best calculated to promote their improvement and civilization.

ARTICLE 6. The missionaries and such other persons as are now, by authority of law, residing in the country ceded by the first article of this agreement, shall each have the privilege of entering one hundred and sixty acres of the said ceded lands, at one dollar and twenty-five cents per acre; said entries not to be made so as to interfere, in any manner, with the laying off of the several reservation herein provided for.

And such of the mixed bloods as are heads of families, and now have actual residences and improvements in

the ceded country, shall have granted them, in fee, eighty acres of land to include their respective improvements.

ARTICLE 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in ardent spirits wines, or other liquors, in the Indian country, shall continue and be in force, within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress.

ARTICLE 8. All roads and highways, authorized by law, the lines of which shall be laid through any of the reservations provided for in this convention, shall have the right of way through the same; the fair and just value of such right being paid to the Indians therefore; to be assessed and determined according to the laws in force for the appropriation of lands for such purposes.

ARTICLE 9. The said bands of Indians, jointly and severally, obligate and bind themselves not to commit any depredations or wrong upon other Indians, or upon citizens of the United States; to conduct themselves at all times in a peaceable and orderly manner; to submit all difficulties between them and other Indians to the President, and to abide by his decision in regard to the same, and to respect and observe the laws of the United States, so far as the same are to them applicable. And they also stipulate that they will settle down in the peaceful pursuits of life, commence the cultivation of the soil, and appropriate their means to the erection of houses, opening farms, the education of their children and such other objects of improvement and convenience, as are incident to well-regulated society; and that they will abstain from the use of intoxicating drinks and other vices to which they have been addicted.

ARTICLE 10. This instrument shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and the Senate of the United States.

In testimony whereof the said George W. Manypenny, commissioner as aforesaid, and the said chiefs and delegates of the Mississippi, Pillager and Lake Winnibigshish bands of Chippewa Indians have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

George W. Manypenny, commissioner.

Tug-o-na-ke-shik, or Hole in the Day, his x mark.

Que-we-sans ish, or Bad Boy, his x mark.

Waud-e-kaw, or Little Hill, his x mark.

I-awe-showe-we-ke-shig, or Crossing Sky, his x mark.

Petud-dunce, or Rat's Liver, his x mark.

Mun-o-min-e-kay-shein, or Rice Maker, his x mark.

Aish-ke-bug-e-koshe, or Flat Mouth his x mark.

Be-sheck-kee, or Buffalo, his x mark.

Nay-bun-a-caush, or Young Man's Son, his x mark.

May-yah-ge-way-we-durg, or the Chorister, his x mark.

Kay-gwa-daush, or the Attempter, his x mark.

Cay-cang-e-we-gwan, or Crow Feather, his x mark.

Show-baush-king, or He That Passeth Under Everything, his x mark.

Chiefs and delegates of the Pillager and Lake Winnibigoshish bands

Executed in the presence of—

Henry M. Rice
Geo. Culver.
D. B. Herriman, Indian agent.
J. E. Fletcher.
John Dowling.
T. A. Warren, United States interpreter.
Paul H. Beaulieu, interpreter.
Edward Ashman, interpreter.
C. H. Beaulieu, interpreter.
Peter Roy, interpreter.
Will P. Rosse, Cherokee Nation
Riley Keys.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Washington 25, D.C.

June 26, 1953

My dear Mr. Miller:

This will refer to your request for a report on H.R. 1063, a bill "To amend title 18, United States Code, entitled 'Crimes and Criminal Procedure', with respect to State jurisdiction over offenses committed by or against Indians in the Indian country, and to confer on the State of California civil jurisdiction over Indians in the State".

I recommend that this bill be enacted if its title and text are amended to conform to the enclosed draft.

The bill would extend the criminal laws of the State of California to all the Indian country within that State. Concurrently, it would withdraw the entire State from the operation of the Federal Indian liquor laws. Finally, it would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved.

Approximately 30,000 Indians live in the State of California. They are divided into many different groups, widely dispersed throughout the State. Their lands include a large number of small rancherias and allotments, which are also widely scattered. The State lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in title 18, United States Code, section 1151, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was conferred by the Act of October 5, 1949 (63 Stat. 705.)

The applicability of Federal criminal laws is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against In-

dians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of title 18, United States Code. As a practical matter, the enforcement of law and order among Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. The Indians of the Hoopa Valley Reservation and the Yuma Reservation have a form of tribal law enforcement, but none of the other reservations in the State has any means of preserving law and order. Consequently, there is a serious hiatus in law enforcement authority that can best be remedied by conferring criminal jurisdiction on the State. The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A likely policy should be applied to the rest of the State. In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063. No opposition to the enactment of the proposed legislation was voiced by any of the Indian groups. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have also indicated their approval.

Proposed legislation similar to H.R. 1063 has been discussed with the Governor of California and he has indicated his approval of the objective of the proposal. The Legislature of California, by Senate Joint Resolution No. 29, has recently memorialized the Congress to enact H.R. 1063.

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as these laws are of general application to private persons or private property. The revision would also make it clear that Indian tribal customs and ordinances would continue to be applicable to civil transactions among the Indians insofar as these customs or ordinances are not inconsistent with the applicable State laws. By so doing the predominance of State authority would be assured, but with a minimum of interference with Indian control of Indian affairs.

The enclosed draft is designed to perfect H.R. 1063 in a manner consistent with its basic intent. The only major substantive difference is the omission of the provisions that would have excluded the entire State from the Operation of the Federal Indian liquor laws. There is no doubt that the Indians of California are as prepared to be subjected to the other laws of the State. However, general legislation to repeal, in whole or in part, the Indian liquor laws is now before the Congress, and it seems preferable to deal with the subject in that manner rather than in a bill, such as H.R. 1063, having a different primary objective.

In large measure the criminal jurisdiction provisions of the enclosed draft are identical with those of H.R. 1063. The subsection that would have reserved to the Federal courts concurrent jurisdiction over offenses by or against Indians has been omitted as its effect would be to make persons in the Indian country subject to two different, and possibly conflicting, systems of law. For like reasons, a subsection has been added that would render inapplicable in California the Federal criminal laws which apply to offenses committed by or against Indians within the Indian country. Finally, the subsection relating to the protection of trust or restricted Indian property and of Indian fishing and hunting rights

has been revised in an effort to make its provisions as precise and certain as possible.

The provisions of the enclosed draft relating to civil jurisdiction are based on those of H.R. 1063, but have been recast in a form that would permit them to be incorporated in the general body of the judicial laws as now codified in title 28 of the United States Code. These provisions are designed to give the State of California jurisdiction over civil controversies and transactions involving Indians to the fullest extent consistent with the discharge of Federal responsibility for the protection of trust or restricted property. The State and its courts could not take any action that would affect the status of this property in any way or that would improperly deprive the Indians of any of the benefits therefrom. However, once the trust or restriction was terminated by the United States, the jurisdiction of the State and its courts would automatically attach.

Both H.R. 1063 and the enclosed draft would repeal section 1 of the Act of October 5, 1949 (63 Stat. 705), which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Aqua Caliente Indian Reservation. The enactment of H.R. 1063, applicable to the entire State, should be accompanied by the repeal of section 1 of this Act in order to make the same civil and criminal jurisdictional statute applicable to all Indian country within the State.

Since I am informed that there is a particularly urgency for the submission of the views of the Department, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made

concerning the relationship of the views expressed herein to the program of the President.

Sincerely yours,

Orme Lewis
Assistant Secretary of the Interior

Hon. A. L. Miller, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington 25, D. C.
Enclosure

SUPREME COURT OF THE UNITED STATES

No. 75-5027

RUSSELL BRYAN, ETC., PETITIONER

v.

ITASCA COUNTY, MINNESOTA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 3, 1975

Mr. Justice Douglas took no part in the consideration or decision of this petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 598390 142